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Federal Communications Commission
Office of Secretary

**Before the
Federal Communications Commission
Washington, D.C. 20554**

FCC 97-34

In the Matter of

Industry Proposal For
Rating Video Programming

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CS Docket No. 97-55

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**Comments of
Benton Foundation**

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I. Introduction – Industry Proposal For A Voluntary Ratings System For Video Programming

On January 17, 1997, the National Association of Broadcasters ("NAB"), the National Cable Television Association ("NCTA"), and the Motion Picture Association of America ("MPAA") submitted a joint proposal to the Commission describing a voluntary ratings system for video programming (the "industry proposal").

The Commission requests comment on whether the industry proposal to rate television programming meets the standards set forth in Section 551(e) of the Telecommunications Act of 1996¹ ("1996 Act") – in particular, whether the industry proposal is "acceptable"² and whether the industry proposal satisfies Congress' concerns.³

The Benton Foundation ("Benton") does not find the industry proposal acceptable to satisfy the concerns of Congress. The industry proposes an aged-based instead of content-based ratings system. The proposal attempts to decide what age group programming is appropriate for instead of informing parents what type of material (violent, sexual, etc) is contained in an upcoming show.

Benton urges the Commission to make provisions that would allow a number of ratings systems to vie side-by-side for the confidence of parents. Broadcasters argue that any government-imposed ratings system will constitute censorship. Any broadcaster-conceived system may serve their commercial interests more than the public interest the 1996 Act intends. The Congress's interest in giving parents sufficient information to make informed choices would best be served by a system

¹ Pub. L. 104-104, 110 Stat. 56 (February 8, 1996).

² 1996 Act, § 551(e)(1)(A).

³ *Id.*, § 551(a).

that allowed parents to choose a ratings system that best meets their needs, not the needs of industry sponsors.

II. About Benton Foundation

Benton believes that communications in the public interest — including free, over-the-air broadcast television — is essential to a strong democracy. Benton's mission is to realize the social benefits made possible by the public interest use of communications. It develops and provides effective information and communication tools and strategies to equip and engage individuals and organizations in the emerging digital communications environment.

Benton's Communications Policy Project is a nonpartisan initiative to strengthen public interest efforts in shaping the emerging National Information Infrastructure. It is Benton's conviction that the vigorous participation of the nonprofit sector in policy debates, regulatory processes and demonstration projects will help realize the public interest potential of the NII.

III. The Industry Proposal Is Not Acceptable and Does Not Satisfy Congress' Concerns

The industry proposal is an aged-based system. Under the industry proposal, television programming would fall into one of six categories (the "industry guidelines").⁴ The intent of

⁴ For programs designed solely for children, the general industry guidelines are: TV-Y (All Children -- *This program is designed to be appropriate for all children*), and TV-Y7 (Directed to Older Children -- *This program is designed for children age 7 and above*). For programs designed for the entire audience, the general industry guidelines are: TV-G (General Audience -- *Most parents would find this program suitable for all ages*), TV-PG (Parental Guidance Suggested -- *This program may contain some material that some parents would find unsuitable for younger children*), TV-14 (Parents Strongly Cautioned -- *This program may contain some material that many parents would find unsuitable for children under 14 years of age*), and TV-M (Mature Audience Only -- *This program is specially designed to be viewed by adults and therefore may be unsuitable for children under 17*). Industry Proposal at 1-2.

Congress was to provide parents will tools to determine the *content* of television programs. The ratings system and v-chip technology are to be provided to "allow [parents] easily to block violent, sexual, or other programming that *they* believe harmful to their children"⁵ [emphasis added]. Parents should be given tools that alert them to the content of an upcoming show, to choose to restrict the children's viewing of specific content, and/or to block the viewing of specific content when children are unsupervised through v-chip technology. By contrast, the industry proposal allows parents the ability to block programming that *broadcasters, cable network operators, and producers* have decided may be inappropriate for a child's age group. These television programming raters actually hide information about shows by not revealing what type of content has led to a show's rating. Parents are not informed if a show has been rated TV-14 because of language, sex or violence in the show. The system does not appear to be aimed at giving parents the necessary tools to make informed decisions – the system appears to try to make the decision *for* parents.

After some weeks to review the industry proposal in action, Congress has given it a failing grade. Senator Slade Gorton (R-WA) has stated that the industry proposal is "not acceptable."⁶ He also said the proposal provides information that is "worse than no information at all."⁷ Senator John Ashcroft (R-MO) has also stated that it is "unacceptable for Hollywood to say what's OK for children to watch."⁸ Representative Edward Markey (D-MA), the primary sponsor of v-chip

⁵ 1996 Act, § 551(a)(9).

⁶ Senate Committee on Commerce, Science, and Transportation. Hearing On The TV Ratings System. February 27, 1997.

⁷ *Id.*

⁸ *Id.*

legislation in the House, has renamed the industry proposal's most popular rating – TV-PG - "too vague, parents give up."⁹

IV. The Commission Should Grant Competing Rating Codes Carriage in the Vertical Blanking Code

Benton proposes that any alternative rating codes gain guaranteed rights of carriage on television broadcasts. Many parents may not feel comfortable with *any* ratings system devised by broadcasters and others with a commercial interest in the outcome. A ratings system devised by a Commission-appointed committee may not pass a constitutional test. The Commission should encourage noncommercial interests such as the National Parent Teacher Association, the American Academy of Child & Adolescent Psychiatry, and others to devise their own ratings systems. The Commission should then insist that broadcasters, cable operators, and other programmers include these ratings in the vertical blanking interval. Such rules for these codes will allow parents to choose the rating system they are most comfortable with. These codes would remain invisible in households that choose not to see them just as closed captioning does not appear in households that do not choose to use it.

Opponents may argue that the vertical blanking interval is not an infinite resource and cannot be burdened with hundreds of competing ratings systems. Benton doubts that overcrowding will be of any problem in the near future. Rating the thousands of hours of television programming would be a Herculean task for any organization. Also, within ten years the nation should be converted to a digital television standard with the benefits of digital compression and other technological gains.

⁹ *Id.*

In comments filed in the 4th Further Notice of Proposed Rulemaking in Mass Media Docket # 87-268, the A.C. Nielsen Company urged the Commission to "refrain from making any substantive change to the currently-applicable requirement that cable systems carry (Nielsen codes)." These codes, Nielsen argues, are crucial to free, over-the-air broadcasting as they empower advertisers in decisions about which programs and broadcasters to sponsor. The needs of the public rate at least as high as those of advertisers in the Commission's rule making. Must carry rules for alternative ratings systems would remain "a nonintrusive and narrowly tailored means of achieving [this] compelling interest."¹⁰

CONCLUSION

For the above reasons, Benton urges the Commission to find the industry proposal unacceptable as it fails to meet the concerns of Congress and to adopt provisions that would put information and choice in the hands of parents.

Respectfully submitted,



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¹⁰ 1996 Act, § 551(a)(9).